



## CITY OF LODI

## COUNCIL COMMUNICATION

AGENDA TITLE: Consider renewing contract with Stubbs Paint and Body to haul abandoned vehicles for the Community Development Department

MEETING DATE: August 21, 1991

PREPARED BY: Community Development Director

RECOMMENDED ACTION: That the City Council consider renewing contract with Stubbs Paint and Body to haul abandoned vehicles for the Community Development Department.

BACKGROUND INFORMATION: On September 4, 1985 the City entered into a Franchise Agreement with Gary Guthrie, CBA Stubbs Auto Body for the removal and dismantling of abandoned, wrecked, dismantled or inoperative vehicles from private property as described in the Municipal Code, Title 10, Section 10-56.

The contract was for a period of three years. It **was** not renewed because a decision of the Federal Ninth Circuit Court of Appeals appeared to require that each removal required a Court Order. Subsequent interpretations of that decision indicate *the* Court Order is only required *when* the issue of privacy *is* raised. If the vehicle is in plain view from public property (i.e. street, alley, park, etc.) it *may* be removed. However, *if* it is behind a fence, a Warrant issued by a Judge is required.

The Community Development Department wants to proceed with the abandoned automobile program and would prefer to have **Mr.** Guthrie haul and dismantle the vehicles. **We** had a very **good** working relationship in the past.

The alternate to renewing the Franchise Agreement would be to put it out to **bid**.

It should be noted that the Contractor removes and dismantles the vehicles without charge to the City or the vehicle owner. The Contractor makes his money from the sale of the dismantled automobiles.

FUNDING: None Required.

  
James B. Schroeder  
Community Development Director

JBS/cg

Attachments

APPROVED



THOMAS A. PETERSON  
City Manager

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## FRANCHISE AGREEMENT

This Agreement, made and entered into 3s of the 4th day of September, 1985, by and between the City of Lodi, a Municipal Corporation of the State of California, hereinafter called CITY, and Guthrie, Inc., hereinafter called CONTRACTOR.

### WITNESSETH:

WHEREAS, the City of Lodi adopted Ordinance No. 954 on June 16, 1971, now, Title 10, Section 10-36, Lodi Municipal Code, providing for the removal and dismantling of abandoned, wrecked, dismantled, or inoperative vehicles on private property within the incorporated limits of the City of Lodi; and

WHEREAS, Contractor owns a duly licensed automobile dismantler with sufficient equipment to fulfill the requirements of removal of abandoned vehicles and the dismantling thereof and is desirous of providing such service to city;

NOW, THEREFORE, City and Contractor mutually agree as follows:

1. SCOPE OF AGREEMENT - This Agreement shall cover the removal, disposal and dismantling pursuant to City of Lodi Ordinance No. 954 of all abandoned, wrecked, dismantled or inoperative vehicles located upon private or public property

not including highways in the incorporated area of the City of Lodi.

2. ORDERS FOR REMOVAL - Contractor shall only remove vehicles when an **order** for removal has been given by the Community Development Director of the City.

3. TERM - This Agreement shall be in effect for a period of three (3) years from and after the date hereof.

4. EXCLUSIVE RIGHTS - Contractor shall have the exclusive right to remove all vehicles ordered removed pursuant to *the* provisions of said Ordinance No. 954 and City agrees not to contract with any other automobile dismantler during the period of this Agreement for **said** services.

5. CHARGES - Contractor agrees to remove all **vehicles** ordered removed without charge to the City or the owners thereof, and vehicles shall only be dismantled or scrapped and shall not thereafter be reconstructed or made operable, out Contractor may sell or dispose of such dismantled automobiles for his own benefit.

6. SERVICES PROVIDED BY CONTRACTOR - Contractor agrees to provide, maintain and operate equipment sufficient to fulfill the requirements of this Agreement and be **capable** of removing at least ten (10) **vehicles** or parts thereof each week. Vehicles removed at the request of private individuals shall not be **included** as *any part of* the required performance. Contractor agrees to operate his business from 8:00 a.m. to 6:00 p.m., Monday through Friday inclusive, excluding legal holidays. Employees of Contractor shall wear a clean and neat

uniform with the identification of Contractor plainly imprinted on the uniform. Employees shall be courteous with good manners and no profane language shall be used. All equipment of Contractor shall be neatly painted and maintained in a business-like manner with the identification of Contractor professionally painted thereon.

7. COMPLIANCE WITH THE LAWS - Contractor agrees to comply with all provisions of law including, but not limited to, the operation of his vehicles and dismantling yard.

8. TIME AND METHOD OF REMOVAL - Contractor agrees to remove vehicles promptly and in any event not later than fifteen (15) **days** after the order for removal is given. When removing the vehicles or parts thereof, the property on which it was located shall be left free from glass or other vehicular debris.

Contractor is not required to obtain permission of the owner of property upon which a vehicle has been ordered removed before entering thereon, but Contractor shall not forcibly enter nor continue his operations if objection thereto is encountered. Contractor shall immediately report any such incident to the Community Development Director for further direction.

9. INDEPENDENT CONTRACTOR - It is understood and agreed that Contractor, in performing this Agreement, is an independent contractor and **is** not performing services herein required as an agent or employee of City.

10. RECORDS - Contractor agrees to maintain complete records of vehicles removed and the disposal made thereof. In addition, Contractor agrees to notify City in writing within ten (10) days after any vehicle is removed.

11. PRIVATE REMOVALS - Any provision of the Agreement to the contrary notwithstanding, Contractor may solicit automobile removal, salvage, and dismantling business from individuals providing that in so doing, Contractor shall not directly or indirectly suggest, state, or imply that a City ordinance requires such removal. Any vehicles so removed, salvaged or dismantled shall not be construed to be removed, salvaged or dismantled pursuant to the terms of said Ordinance No. 954 or under the aforesaid provisions of this Agreement. It is also understood and agreed Contractor shall not charge individuals for the removal of any vehicle or parts thereof providing that proper documentation of title is furnished Contractor pursuant to the Vehicle Code of the State of California. Said documentation shall be furnished Contractor prior to removal of said vehicle or part thereof. Contractor shall furnish written record to City by the fifth (5th) day of each month of all vehicles or parts thereof removed by the Contractor during the previous calendar month pursuant to this article.

12. INDEMNITY AND INSURANCE - Contractor assumes all risks incident to, or in connection with, this Agreement for the full period thereof and shall be solely responsible for all accidents or injuries to persons or property caused by its

operations and Contractor agrees to maintain in full force during the term hereof a policy of public liability insurance under **which** Contractor is named **3s** insured, and containing an Additional Named Insured Endorsement naming City as an additional insured, and **under** which the insurer agrees to indemnify and hold Contractor and City harmless from, **and** against **all** costs, expenses, and liability arising out of, or based upon, any **and** all property damage, or damages for personal injuries, including death, sustained in accidents occurring in or about the demised premises; **where** such accident, damage, or injury, including death, results, or **is** claimed to have resulted, from any act or omission on the part of Contractor or Contractor's agents or employees. **The** minimum limits of such insurance shall be \$500,000.00/ \$1,000.000.00. **In** addition to **the Additional Named Insured** Endorsement on Contractor's policy of insurance, said insurance policy shall be endorsed **to** include the following language:

"Such insurance as is afforded by the endorsement for the Additional Insureds shall apply as primary insurance. Any other insurance maintained **by** the City of Lodi or its officers and employees shall **be excess** only and not contributing with the coinsurance afforded **by** this endorsement."

A duplicate or certificate of said public liability and property damage insurance containing the above-stated required endorsements shall be delivered to City within ten (10) days after the issuance and each renewal **of** said policy. This paragraph and all other provisions **of** this Agreement, shall apply and be construed as applying to any subcontractor of Contractor.

13. DEFAULT - If either party hereto defaults or fails to perform any of the terms herein provided, then this Agreement shall terminate upon failure of the defaulting party to correct said default within fifteen (15) days after receiving written notice thereof from the other party hereto, but **said** termination shall not be exclusive of other remedies provided by law for such default. Time shall be of essence **of** this Agreement **and** every provisions hereof shall be construed **to** be material **and** substantial.

14. This Agreement shall be and remain in effect for a period of three (3) years from **and** after the date hereof, provided, however, that this Agreement **may** be unilaterally cancelled by C'ty or Contractor upon ninety (90) days written notice given to the other party.

IN WITNESS WHEREOF, the parties have set their hands as  
of the 11th day of September, 1985.

CITY OF LODI

GUTHRIE, INC.

By Chas. A. Olson  
City Manager

By [Signature]

Attest: Alice M. Reimche  
Alice M. Reimche  
City Clkrk

agree5



RESOLUTION NO. 91-158

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A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING THE RENEWAL OF A CONTRACT WITH STUBBS PAINT AND BODY  
TO HAUL ABANDONED VEHICLES FOR THE COMMUNITY DEVELOPMENT DEPARTMENT

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WHEREAS, Lodi Municipal Code, Section 3.20.070 authorizes dispensing with bidding procedures for services, purchases of supplies or property when the City Council determines that the purchase or method of purchase would be in the best interests of the City; and

WHEREAS, the Community Development Department has in the past carried on, and wishes to continue the abandoned automobile program; and

WHEREAS, the services for this program provided by Stubbs Paint and Body in the past have been most favorable and at no charge to the City or the vehicle owner;

NOW, THEREFORE, BE IT RESOLVED, that the Lodi City Council hereby approves the renewal of the contract with Stubbs Paint and Body to haul abandoned vehicles for the Community Development Department under the same terms and conditions as previously agreed to in the 1985 Agreement.

Dated: August 21, 1991

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I hereby certify that Resolution No. 91-158 was passed and adopted by the Lodi City Council in a regular meeting held August 21, 1991 by the following vote:

Ayes: Council Members - Pennino, Pinkerton, Sieglock,  
Snider, and Hinchman  
Noes: Council Members - None  
Absent: Council Members - None

  
Alice M. Reimche  
City Clerk

91-158